



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

EJK:SPN
F. # 2001V00705

*271 Cadman Plaza East
Brooklyn, New York 11201*

September 24, 2013

By Hand and ECF

The Honorable John Gleeson
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Francois Holloway v. United States
Civil Docket No. 01-1017 (JG)

Dear Judge Gleeson:

On September 17, 2013, after hearing brief oral argument on Petitioner Francois Holloway's pending Rule 60(b) motion in the above-referenced case, the Court requested that the government review its case files for any documents relating to the plea offer declined by Mr. Holloway in advance of trial in the criminal case captioned United States v. Holloway, 95 CR 078 (JG) (E.D.N.Y.). The government reviewed its case files and found the following documents, all publicly filed or otherwise introduced into the public record in connection with the criminal case against Mr. Holloway and attached hereto for your reference:

EXHIBIT	DOCUMENT	DATE
A	Order requiring transfer of defendant Holloway from F.C.I., Otisville, to the MCC starting June 12, 1995 "to discuss the possible disposition of his case."	6/6/1995
B	Plea agreement executed by all parties and marked Court Exhibit 1.	6/22/1995

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

ADBU MUSA ALI,
a.k.a. FRANCIOS HOLLOWAY
Defendant.

J. Gleeson, U.S. District Judge

FILED
IN CLERKS OFFICE
U.S. DISTRICT COURT ED. N.Y.
★ JUN 7 1995 ★

ORDER
P.M. _____
TIME A.M. _____

~~91 CR 890 (KMM)~~

95-CR-78 (JG)

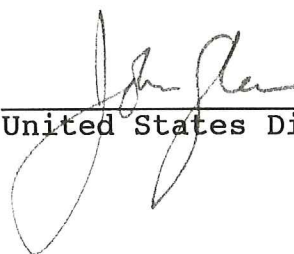
WHEREAS Dana Hanna, attorney for the Defendant requests that the Defendant in the above captioned case be transferred from F.C.I., Otisville, New York, where he is currently being incarcerated, to the Metropolitan Correctional Center, New York, New York, for a period of one week, beginning on June, 12 1995, to discuss the possible disposition of his case.

THEREFORE the United States Marshals Service, the Bureau of Prisons or any party responsible for the care and control of Abdu Musa Ali, #45-116-053, are hereby ordered to make arrangements as may be necessary for this defendant to be transferred by June 12, 1995 to the Metropolitan Correctional Center, New York, New York, for a period of one week.

SO ORDERED.

Dated: Brooklyn, New York

June 6, 1995


United States District Judge

52

EXHIBIT B

LC:DLG:sr
F. #9405374
DLG50024.PLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X



UNITED STATES OF AMERICA

PLEA AGREEMENT

- against -

95 CR 78(JG)

FRANCOIS HOLLOWAY
a/k/a "Abdu Musa Ali,"

Defendant.

- - - - -X

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Attorney's Office for the Eastern District of New York (the "Office") and FRANCOIS HOLLOWAY a/k/a "Abdu Musa Ali" (the "defendant") agree to the following:

1. The defendant will plead guilty to Counts Nine and Ten of the above-captioned indictment, charging carjacking and possession of a firearm in violation of 18 U.S.C. §§ 2119 and 924(c)(1) respectively. Count Nine carries the following statutory penalties:

- a. Maximum term of imprisonment: 15 years
(18 U.S.C. § 2119).
- b. Minimum term of imprisonment: 0 years
(18 U.S.C. § 2119).
- c. Maximum supervised release term: 5 years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced up to 3 years without credit for pre-release imprisonment or time previously served on post-release supervision
(18 U.S.C. §§3583 (b), (e)).
- d. Maximum fine: \$250,000
(18 U.S.C. § 3571(b)(3)).

- e. Restitution: as required by statute (18 U.S.C. §3663).
- f. \$50 special assessment (18 U.S.C. §3013).
- g. Other penalties: [deportation, costs of prosecution in tax cases] N/A.

Count Ten carries the following statutory penalties:

- a. Mandatory term of imprisonment: 5 years, consecutive to term of imprisonment imposed under Count Nine. (18 U.S.C. § 924(c)).
- b. Maximum supervised release term: 3 years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced up to 2 years without credit for pre-release imprisonment or time previously served on post-release supervision. (18 U.S.C. §§3583(b), (e)).
- c. Maximum fine: \$250,000 (18 U.S.C. §3013).
- d. Restitution: As required by statute (18 U.S.C. § 3571(b)(3)).
- e. \$50 special assessment (18 U.S.C. §3013).
- f. Other penalties: N/A

2. The defendant will be sentenced under the United States Sentencing Guidelines. The parties agree that the Court and Probation Department will be advised of all information relevant to sentencing, including all criminal activity engaged in by the defendant, and that such information will be used to calculate the Sentencing Guidelines range. Based upon information now known to it, the Office estimates the likely adjusted offense level under the Sentencing Guidelines to be level 23, which is predicated on the following Guidelines

calculation: the defendant's base level is 20. The level is increased by 5 because a firearm was displayed. The level is increased by 1 because the vehicle was worth more than \$10,000. This results in a level of 26. The defendant receives a 3 point reduction for acceptance of responsibility, resulting in an adjustment level of 23. This level carries a range of imprisonment of 70-87 months, because the defendant has 4 prior convictions. In addition, pursuant to his plea of guilty to Count Ten, the defendant will serve a mandatory five year term of imprisonment that will be consecutive to the sentence imposed pursuant to Count Nine.

3. By this agreement, the Office recommends to the Probation Department that the calculation set forth in paragraph 2 be adopted. If the Probation Department finds that any portion of the calculation set forth in paragraph 2 is incorrect, the Office reserves the right to argue that the Court should adopt the Probation Department's finding. The calculation set forth in paragraph 2 is not binding on the Court, and if the appropriate Guidelines offense level as determined by the Court is different, the defendant will not be entitled to withdraw the plea.

4. The defendant agrees not to file an appeal in the event that the Court imposes a sentence within or below the applicable Sentencing Guidelines range as determined by the Court.

5. In exchange for the defendant pleading guilty, at sentencing the Office will:

- a. move to dismiss the remaining counts of the indictment with prejudice, and the Office agrees that it will bring no further criminal charges against the defendant for the conduct described in the initial complaint and the indictment, so far as supported by facts known to the Office at this time, to wit: carjacking occurring between October 6, 1994 and November 15, 1994. This agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to the RICO statute (18 U.S.C. §§ 1961 et seq.);

and, based upon information now known to the Office,

- b. take no position concerning where within the appropriate Sentence Guideline range, as determined by the Court, the sentence should fall;

and

- c. make no motion for an upward departure under the Sentencing Guidelines.

If information becomes known to the Office after the date of this agreement which renders inappropriate our compliance with subparagraphs b or c above, the defendant will not be entitled to withdraw his plea.

6. This agreement is limited to the United States Attorney's Office for the Eastern District of New York and cannot bind other federal, state or local prosecuting authorities. It does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the defendant, including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax

liability or forfeiture of assets. The defendant hereby waives any claim of double jeopardy in the event that such proceedings have been, are, or will be initiated.

7. No promises, agreements or conditions have been entered into other than those set forth in this agreement, and none will be entered into unless memorialized in writing and signed by the parties. This agreement, to become effective, must be signed by all of the parties listed below.

Dated: Brooklyn, New York

~~May~~ , 1995

June 20

Respectfully submitted,

ZACHARY W. CARTER
United States Attorney
Eastern District of New York

By:

Dolan L. Garrett
Dolan L. Garrett
Assistant U.S. Attorney

Agreed and consented to:

Abdus Musa Ali
Defendant

Approved by:

Gene Ha
Counsel to Defendant

Approved by:

John F. Curran
Supervising Assistant U.S. Attorney

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

-against-

FRANCOIS HOLLOWAY a/k/a
"ABDU MUSA ALI", Defendant.

-----X

CR - 95-78

United States Courthouse
Brooklyn, N.Y. 11201

June 22, 1995
10:30 A.M.

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

For the Government..... ZACHARY W. CARTER
United States Attorney
BY: DOLAN GARRETT
Assistant U.S. Attorney

For the Defendant..... DANNA HANNA, ESQ.

OFFICIAL COURT REPORTER
HENRI LE GENDRE
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Proceedings recorded by mechanical stenography; transcript
produced by dictation.

1 THE CLERK: USA versus FRANCOIS HOLLOWAY,
2 also known as "Abdu Musa Ali."

3 MR. GARRETT: Good morning, your Honor.

4 THE COURT: Good morning. Good morning,
5 Mr. Holloway; how are you?

6 DEFENDANT HOLLOWAY: So-so.

7 THE COURT: Is there an agreement somewhere?

8 MR. GARRETT: Yes, there is. I believe
9 Mr. Holloway is looking at it now.

10 THE COURT: All right.

11 MR. HANNA: Judge, Mr. Holloway has seen
12 the prior plea agreement. The one that I have now
13 has one minor change in it.

14 THE COURT: Why don't you have a seat with
15 your counsel at the table, I want you to go over that
16 agreement carefully.

17 MR. HANNA: I went out to MCC but they had
18 already shipped him out to Otisville.

19 THE COURT: Any problem on your part with
20 that?

21 MR. GARRETT: While Mr. Hanna is going
22 over the agreement, may I approach with an unrelated
23 matter, your Honor?

24 (Pause)

25 MR. HANNA: Judge, I've gone over the

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BROOKLYN, NEW YORK 11201

1 plea agreement and I believes my client understands
2 the changes that have been made from the first proposed
3 plea agreement. I've gone over it with him and my
4 client has signed the plea agreement, as I have.

5 THE COURT: All right.

6 Could you hand it up to the Court when
7 you finish signing it, Mr. Garrett?

8 MR. GARRETT: Yes, I will, your Honor.

9 THE COURT: All right, Mr. Holloway, before
10 I can accept a plea of guilty from you there are a
11 number of things that I need to go over with you,
12 questions I need to ask of you, things I need to
13 tell you, all very important. If you don't under-
14 stand anything I say, please tell me and I'll re-
15 phrase it until you understand it.

16 All right?

17 One other thing, you have to answer audibly
18 so the court reporter can take it down.

19 DEFENDANT HOLLOWAY: Yes.

20 THE COURT: Please swear the defendant.

21 (Whereupon, the defendant was sworn in
22 by the Clerk of the Court)

23 THE CLERK: State your full name.

24 DEFENDANT ALI: Adbu Musa Ali.

25 THE COURT: Excuse me, I've been calling

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UNITED STATES DISTRICT COURT

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BROOKLYN, NEW YORK 11201

1 you by the wrong name.

2 How old are you?

3 DEFENDANT ALI: 38.

4 THE COURT: How much education have you
5 had?

6 DEFENDANT ALI: Twelve years.

7 THE COURT: Have you finished high school?

8 DEFENDANT ALI: Yes.

9 THE COURT: Have you had any difficulty
10 communicating effectively with your attorney?

11 DEFENDANT ALI: No.

12 THE COURT: Are you satisfied with the repre-
13 sentation he's giving you?

14 DEFENDANT ALI: Yes.

15 THE COURT: are you presently under the
16 care of a physician or a psychiatrist?

17 DEFENDANT ALI: No.

18 THE COURT: Have you taken any alcohol
19 in the last 24 hours?

20 DEFENDANT ALI: No.

21 THE COURT: Have you taken any medication
22 in the last 24 hours?

23 DEFENDANT ALI: No.

24 THE COURT: Have you taken any drugs of
25 any sort in the last 24 hours?

1 DEFENDANT ALI: No.

2 THE COURT: Is your mind clear here today?

3 DEFENDANT ALI: Yes.

4 THE COURT: Mr. Hanna, do you have any
5 doubt in your mind about the competence of your
6 client to plead today?

7 MR. HANNA: No, your Honor.

8 THE COURT: Let me explain to you, Mr. Ali,
9 the rights you would be waiving by pleading guilty.

10 You have a right to persist in your plea
11 of not guilty to all of the charges in this indict-
12 ment against you, and if you do that we'll have a
13 trial, a speedy trial right here in this courtroom,
14 open to the public.

15 The jury will sit in that box over there
16 (indicating). At that trial you wouldn't have to
17 prove anything. You are presumed to be innocent
18 under our Constitution. The government would have
19 to prove your guilt beyond a reasonable doubt, and
20 if it failed to do so I would tell the jury that
21 your presumption of innocence protects you and it
22 requires them to find you not guilty. The govern-
23 ment has to satisfy that heavy burden.

24 Do you understand that?

25 DEFENDANT ALI: Yes.

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UNITED STATES DISTRICT COURT

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BROOKLYN NEW YORK 11201

1 THE COURT: At a trial the government would
2 be required to bring its witnesses into this courtroom.
3 They would testify under oath in this chair right
4 here on my left. You would be in the courtroom, you
5 would confront those witnesses. Mr. Hanna could
6 cross-examine those witnesses. He could object to
7 evidence offered against you by the government and
8 he could offer evidence in your own defense as well.

9 Do you understand that?

10 DEFENDANT ALI: Yes.

11 THE COURT: Part of that right to offer
12 evidence in your own defense is your right to testify
13 in your own defense. You would be entitled to do
14 that if you chose to do so. On the other hand,
15 under our Constitution you have an absolute funda-
16 mental right to remain silent, and if you chose to
17 exercise that right I would tell the jury in very
18 strong terms that they could not hold that against
19 you; it's your right to remain silent, it's a funda-
20 mental, absolute right and should not be taken into
21 consideration or held against you in any way.

22 Do you understand all that?

23 DEFENDANT ALI: Yes.

24 THE COURT: Now, if you plead guilty you
25 will be giving up those rights, your right to a

1 trial and the other rights I've just discussed, and
2 we won't have a trial, I would simply enter a judgment
3 of guilt based on your plea of guilty. You wouldn't
4 have a right to appeal from that finding of guilt.

5 Do you understand that?

6 DEFENDANT ALI: Yes.

7 THE COURT: Also, as part of the process
8 of pleading guilty I must assure myself that someone
9 who wants to plead guilty is in fact guilty. My
10 way of doing that is to pose questions to you which
11 you'll have to answer under oath telling me what you
12 did that makes you guilty. And by engaging in that
13 process you'll be giving up that right to remain
14 silent that I mentioned a moment ago.

15 Do you understand that?

16 DEFENDANT ALI: Yes.

17 THE COURT: Are you willing to give up your
18 right to a trial and the other rights I've just
19 discussed by pleading guilty?

20 DEFENDANT ALI: Yes.

21 THE COURT: Now, I have this agreement that
22 I have marked as Court Exhibit 1 of today's date
23 between you and the government, and I witnessed
24 you executing this agreement here in my presence.

25 Have you had a sufficient opportunity to

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1 go over this agreement with your lawyer?

2 DEFENDANT ALI: Yes.

3 THE COURT: Mr. Hanna, are you satisfied
4 that you had an ample opportunity to go over each
5 and every one of the terms in this agreement with
6 your client?

7 MR. HANNA: Yes, your Honor.

8 THE COURT: I want to go over just a few
9 of them here with you, Mr. Ali, but I also want to
10 emphasize that if you want to go over some additional
11 ones that I choose not to mention here this morning
12 you are free to say so. We'll go over every term
13 if that's what you would like.

14 All right?

15 DEFENDANT ALI: Yes.

16 THE COURT: Now, the agreement says that
17 you will plead guilty to Counts 9 and 10 of the
18 indictment.

19 Do you understand that Count Nine of the
20 indictment carries a maximum possible term of imprison-
21 ment of fifteen years?

22 DEFENDANT ALI: Yes.

23 THE COURT: It also carries a possible term
24 of supervised release of up to five years to follow
25 any term of imprisonment.

1 Do you understand that?

2 DEFENDANT ALI: Yes.

3 THE COURT: Do you understand what supervised
4 release is?

5 DEFENDANT ALI: Yes.

6 THE COURT: Basically what it means is
7 that if I impose a sentence of imprisonment on you,
8 when you get out, when you finish that term of
9 imprisonment and you are released, you are not imme-
10 diately free, you are subject to supervision. Certain
11 things you are not allowed to do and certain things
12 your must do. If you fail to abide by those restric-
13 tions, if you violate them then you are subject to
14 the possibility of going back to prison for the
15 term of your supervised release without credit for
16 the other time you already spent in prison, and
17 possibly without credit for the time that you already
18 spent on supervised release.

19 Do you understand all that?

20 DEFENDANT ALI: Yes.

21 THE COURT: Do you understand that there's
22 a maximum possible fine -- and I'm not saying by
23 mentioning all these maximum possible conditions
24 to you, I'm not saying that I will impose them,
25 but it's important that you understand that I could

1 impose them.

2 Do you understand that?

3 DEFENDANT ALI: Yes.

4 THE COURT: There is a maximum possible
5 fine of \$250,000 on Count Nine.

6 Do you understand that?

7 DEFENDANT ALI: Yes.

8 THE COURT: There is also the possibility
9 that I could order you as part of your sentence to
10 make restitution, and what that means is that you
11 compensate, you make whole the people who might
12 have been victims of your crime.

13 Do you understand that, sir?

14 DEFENDANT ALI: Yes.

15 THE COURT: And lastly, there is a part
16 of your sentence as to which I have no discretion,
17 if I accept the plea of guilty from you, on Count
18 Nine I must impose a \$50 special assessment on you
19 at the time of sentence.

20 Do you understand all that?

21 DEFENDANT ALI: Yes.

22 THE COURT: Now, Count Ten charges you
23 with using and carrying a firearm in connection with
24 a crime of violence; that charge carries a maximum
25 term of imprisonment of five years.

1 Do you understand that?

2 DEFENDANT ALI: Yes.

3 THE COURT: Now, it's not only a maximum
4 term of imprisonment, that's a mandatory term of
5 imprisonment, and it's not only a mandatory five-year
6 term, but the law requires you serve consecutive in
7 addition to the term of imprisonment that I may impose
8 on Count Nine in the indictment.

9 Do you understand that, Mr. Ali?

10 DEFENDANT ALI: Yes.

11 THE COURT: There is a supervised release
12 term that comes with Count Ten as well, and that is
13 a supervised release term of up to three years.

14 Do you understand that, sir?

15 DEFENDANT ALI: Yes.

16 THE COURT: There is a maximum fine on
17 Count Ten which I could impose, conceivably could
18 impose in addition to the maximum fine on Count Nine,
19 and the fine on Count Ten could be, again, as much
20 as \$250,000.

21 Do you understand that, sir?

22 DEFENDANT ALI: Yes.

23 THE COURT: And, similarly, I could require
24 you to make restitution on Count Ten to the victims
25 of your crime in precisely the same way I could order

1 restitution.

2 Do you understand that?

3 DEFENDANT ALI: Yes.

4 THE COURT: And, finally, there is also
5 a mandatory assessment of \$50.

6 Do you understand that?

7 DEFENDANT ALI: Yes.

8 THE COURT: This agreement makes reference
9 to the Sentencing Guidelines.

10 Have you had an opportunity to discuss with
11 Mr. Hanna what those sentencing guidelines are?

12 DEFENDANT ALI: Yes.

13 THE COURT: There is a specific estimate
14 set forth in this agreement that you have with the
15 government as to what your guideline range will be,
16 and that's just fine. That's one of the functions
17 of counsel, to give you an estimate of what your
18 guideline range would be. It's appropriate for the
19 government to put into an agreement what the estimate
20 of the guideline range would be, but it's extremely
21 important that you recognize that's all it is, is
22 an estimate, and in fact I can't tell you now what
23 your guideline range will be.

24 Do you understand that?

25 DEFENDANT ALI: Yes.

1 THE COURT: That only gets computed after
2 you are interviewed by an officer of the court, a
3 probation officer, who then prepares a pre-sentence
4 report. After she presents that pre-sentence report
5 I'll hear from Mr. Garrett, I'll hear from Mr. Hanna,
6 and only then will I be able to determine with any
7 certainty what your guideline range will be, and
8 if it turns out that the guideline range calculated
9 turns out to be greater than the guideline range
10 estimated in this agreement it's not going to be a
11 basis on which I'll permit you to withdraw your plea
12 of guilty.

13 Do you understand that?

14 DEFENDANT ALI: Yes.

15 THE COURT: Do you have any questions to
16 ask me based on the information we have discussed
17 so far?

18 DEFENDANT ALI: No.

19 THE COURT: Is there any aspect of this
20 agreement that you have with the government that I
21 haven't gone over with you that you would like to
22 go over with the Court?

23 DEFENDANT ALI: No.

24 THE COURT: Are you ready to plead at this
25 time?

1 DEFENDANT ALI: Yes.

2 THE COURT: Mr. Hanna, do you know of any
3 reason why Mr. Ali should not plead guilty to Counts
4 Nine and Ten against him?

5 MR. HANNA: No, I do not, but I would like
6 to clarify or set forth our position with regard to
7 a matter in the Plea Agreement that I have discussed
8 with Mr. Garrett, and that is with regard to Para-
9 graph 4:

10 "The defendant agrees not to file an
11 appeal in the event the Court imposes a
12 sentence within or below the applicable sentencing
13 guideline range as determined by the Court."

14 It is my understanding of the meaning of
15 this paragraph, that the -- in other words, I do not
16 read this to be an absolute waiver of any right to
17 appeal regardless of whatever the sentencing range
18 as determined by the Court, that is, as I understand
19 this -- if I'm wrong, that's why I'm raising it.

20 As I understand the meaning of this paragraph,
21 it means that should the applicable guideline range
22 be, for example, 70 to 87 months we would not be able
23 to appeal on the basis that the defendant should have
24 been given a sentence towards the low end rather than
25 the high end. However, if the Court were to determine

1 the applicable guideline range on the basis of what
2 we believe to be a legal mistake, then I do not
3 believe I'm waiving that right to an appeal. In
4 other words, I don't think this would prevent me,
5 or prohibit us from filing an appeal if -- not that
6 I expect it -- if there were a sentencing guideline
7 range determined without a proper basis. I just want
8 to clarify that.

9 THE COURT: I'll hear from Mr. Garrett in
10 a minute, but since in that first set of circumstances
11 you described, that is an appeal based on where within
12 a range sentence ought to be, since you don't have
13 such a right already it's hard for me to figure out
14 what it is you waive by Paragraph Four, unless it's
15 the right that you have just said you don't want to
16 waive.

17 Do you understand what I'm saying?

18 MR. HANNA: I understand what you are saying.
19 I'm not certain in some theoretical sense the defendant
20 doesn't have a right to bring an appeal on the grounds
21 of arguing abuse of discretion even if the guideline
22 range should be given toward the low end of sentence,
23 even though that might not be an argument that will
24 ever prevail.

25 THE COURT: Let's for the benefit of Mr. Ali,
EASTERN DISTRICT COURT REPORTERS

1 whose interests are at stake, let's get more concrete
2 about this. Generally speaking under the law if
3 I calculate the guideline range correctly, and if
4 I were to come up with a guideline range of 70 to
5 87 months, and I want to get it right, I would apply
6 the facts of your case correctly to the law. You
7 wouldn't have a right to appeal if I sentenced you
8 to 83 months because it's within the correct range.
9 It's also true, generally speaking, in the absence
10 of an agreement, that if I calculate the guideline
11 range like, for example, applying the incorrect
12 guideline or incorrectly giving you an upward
13 adjustment because of your role in the offense,
14 that that type of conduct I guess is appealable
15 and you could go to the Court of Appeals and say
16 Judge Gleeson got it wrong, and the guideline range
17 would calculate it correctly.

18 What this agreement says, and by agreement
19 you can waive any number of rights, Constitutional,
20 regulatory or otherwise. And what this agreement
21 says to me -- but, of course, the government would
22 be the one taking a position on this in the Court
23 of Appeals. But what this agreement says to me,
24 unambiguously, is that as long as the Court imposes
25 a sentence within or below the applicable sentencing

1 guideline range as determined by the Court there is
2 no right to appeal. And it seems to me that if
3 in fact this agreement reserved the right to appeal
4 my applying the incorrect guideline range, which is
5 what you would like it to reserve, then it doesn't
6 waive anything.

7 That's my sense of this, but, of course,
8 I'm just the Judge, I wouldn't be the one litigating
9 the terms of this agreement; it would be you.

10 Would you like to be heard, Mr. Garrett?

11 MR. GARRETT: You are the Judge, and you
12 wouldn't be litigating this matter. However, the
13 government does agree -- in the past life you have
14 had a lot of experience with the interpretation of
15 this particular document, so I'm not inclined to
16 disagree with the Court's interpretation of what it
17 means.

18 THE COURT: Now, Mr. Ali, do you understand
19 all of this?

20 DEFENDANT ALI: (nodding)

21 THE COURT: It's very important that you
22 do. I'll give you an opportunity if you would
23 like, to speak to your client, Mr. Hanna.

24 This is a contract, and what this contract
25 says in my judgment is that I will calculate the

1 guideline range, I'll do my level best to make sure
2 I select the correct guideline, to make sure in making
3 any adjustment to that guideline regarding, for
4 example, your role in the offense, or the worth of
5 the vehicle, of course, I'll do my level best to get
6 it right; that's my job. But what this agreement
7 says, in my judgment is as long as I sentence you within
8 the guideline range as I calculate it to be, you
9 have by this contract given up your right to appeal
10 from that sentence even if I got it wrong, even I
11 got the guideline range calculation wrong. Strikes
12 me as a very important matter.

13 MR. HANNA: It strikes me as an important
14 matter, too, your Honor.

15 THE COURT: It strikes me as potentially
16 an irrelevant matter --

17 MR. HANNA: Judge, --

18 THE COURT: Who knows? And you may want
19 to discuss this further with your client.

20 MR. HANNA: It strikes me -- my sense of
21 it is that it is a denial of fundamental fairness
22 to the defendant, to tell him that the terms of your
23 entering into an agreement with the government are
24 regardless what the Court does, regardless what the
25 Court does you cannot appeal, and that's essentially

1 what I'm hearing here.

2 THE COURT: Well, whether or not that's
3 right, it's not a matter of denial of fundamental
4 fairness. This is a contract. I haven't taken a
5 plea of guilty yet, and you have -- if you are dissatis-
6 fied with any of the terms of this agreement you
7 can either bargain with the government to change it,
8 and if unsuccessful you don't have to take it. This
9 is not an agreement that you are forced to take.
10 And, in fact, if you are unhappy, if there is not
11 a meeting of the mind on the terms of this agreement,
12 as far as the Court is concerned there is no agree-
13 ment. It's not as though you shouldn't feel so
14 put upon, because if in fact it is not your intention
15 to waive the right that I think is waived by Para-
16 graph 4, then I suggest to you you shouldn't enter
17 into this agreement with the government.

18 MR. GARRETT: Well, your Honor, if I might
19 be heard. The type of bargain the Court talked to
20 was yesterday. Mr. Hanna stated he wanted to
21 raise this issue of Paragraph 4, and I informed
22 him, that particular paragraph is standard language
23 in all our plea agreements and would not be changed.
24 Some changes were made. That was one that was not.
25 Nor do I contemplate that paragraph ever being changed

1 by any other U.S. Attorney.

2 THE COURT: That's a matter that's up to
3 the Office of the U.S. Attorney.

4 Provided in that case it's not going to
5 be changed, then the next question is whether you
6 want to reach an agreement with the U.S. Attorney's
7 office. In light of that fact -- and that's entirely
8 up to you. Nobody, least of all the Court is forcing
9 you into an agreement.

2) 10 MR. HANNA: I do want to discuss this for
11 a few minutes with my client.

12 THE COURT: Absolutely.

13 Let me hand you back the agreement.

14 (Whereupon, a short recess was had)

15 (After recess)

16 THE CLERK: Case recalled. USA versus HOLLOWAY.

17 MR. HANNA: I'll ask the Court's indulgence
18 and ask for a few days' adjournment so Mr. Holloway
19 could be assured in his mind about the proceeding.
20 I anticipate we are going to plead here. But just
21 to give you background, Judge, this matter was
22 set down about two days ago, and I would like to
23 speak to Mr. Holloway. They shipped him off.
24 Mr. Holloway found out about -- Mr. Ali found out
25 about this plea being scheduled this morning. I would

1 feel more comfortable to be sure that we do have a
2 meeting of the minds on this one particular paragraph.

3 THE COURT: Mr. Garrett?

4 MR. GARRETT: No problem.

5 THE COURT: What would you suggest?

6 MR. HANNA: Any time next week other than
7 Friday. Any time that's available to the Court.

8 THE COURT: Thursday at ten o'clock, the
9 29th.

10 MR. HANNA: Thank you.

11 THE COURT: All right, I'll see you then.

12 (Whereupon, Court stood in recess for the
13 day in this matter)

14 *****

EXHIBIT D

CRIMINAL CAUSE FOR ARRAIGNMENT/PLEADING

BEFORE JUDGE GLEESON

CR- 95-78

6/22/95
TIME:

DEFT NAME:

Francis Kellaway
present

not present

cust.

bail

DEFENSE COUNSEL:

Nana Nana
present

not present

CJA

RET.

LAS

A.U.S.A.:

Colon Garrett

CLERK: VIVIAN VIRNO

E.S.R.:

Henri Le Gendre

OTHER:

INT: (LANG.-)

☒ CASE CALLED. ☐ DEFTS FIRST APPEARANCE.
☒ DEFT SWORN ☐ ARRAIGNED ☒ INFORMED OF RIGHTS
☐ WAIVES TRIAL BEFORE DISTRICT COURT

☐ WAIVER OF INDICTMENT EXECUTED FOR DEFT.
☐ SUPERSEDING INDICTMENT / INFORMATION FILED.
☐ DEFT FAILED TO APPEAR, BENCH WARRANT ISSUED.

☐ DEFT ENTERS **GUILTY PLEA** TO CTS. ☐ O F
(Superseding) INDICTMENT/INFORMATION.
☒ DEFT **WITHDRAWS** NOT GUILTY PLEA AND ENTERS **GUILTY PLEA** TO CTS.
9 & 10 OF THE (~~Superseding~~) INDICTMENT /
INFORMATION.

☐ COURT FINDS FACTUAL BASIS FOR THE PLEA.
☒ DEFT REQUESTS RETURN OF PROPERTY **ORDER FILED.**
~~SENTENCING TO BE SET BY PROBATION.~~ *9/22/95 10:00AM*

☐ DEFT ENTER **NOT GUILTY PLEA.**
☐ BAIL ☐ SET ☐ CONT'D FOR DEFT.
☒ DEFT CONT'D IN CUSTODY.
☐ CASE ADJ'D TO _____ FOR _____
☐ JYSELECT SET FOR _____ BY MAG.
☐ TRIAL SET FOR _____
☐ SPEEDY TRIAL INFO FOR DEFT ☐ STILL IN EFFECT
☐ CODE TYPE _____ START _____ STOP _____
☐ ORDER / WAIVER EXECUTED & FILED. ☐ ENT'D ON RECORD.
☐ In the interest of justice as stated on the record.
☐ DISCOVERY ORDER FILED. c/m

OTHER: *Plea withdrawn - Counsel needs additional time to go over paragraph 4 of the plea agreement. Next day 6/29/95 10 AM*

(54)

EXHIBIT E

CRIMINAL CAUSE FOR ARRAIGNMENT/PLEADING

BEFORE JUDGE GLEESON

CR- 95-78

6/29/95

TIME: _____

DEFT NAME: Francis Hallaway "Karlton Musa Ali" # 1

present not present cust. bail

DEFENSE COUNSEL: Dana Hanna

present not present CJA RET. LAS

A.U.S.A.: Edgar Garrett CLERK: VIVIAN VIRNO

E.S.R.: Marsha Diamond OTHER: _____

INT: (LANG.-)

 CASE CALLED. DEFTS FIRST APPEARANCE.
DEFT SWORN ARRAIGNED INFORMED OF RIGHTS
 WAIVES TRIAL BEFORE DISTRICT COURT

 WAIVER OF INDICTMENT EXECUTED FOR DEFT.
 SUPERSEDING INDICTMENT / INFORMATION FILED.
 DEFT FAILED TO APPEAR, BENCH WARRANT ISSUED.

 DEFT ENTERS **GUILTY PLEA** TO CTS. O F
(Superseding) INDICTMENT/INFORMATION.
 DEFT **WITHDRAWS** NOT GUILTY PLEA AND ENTERS **GUILTY PLEA** TO CTS.
 OF THE (Superseding) INDICTMENT /
INFORMATION.
 COURT FINDS FACTUAL BASIS FOR THE PLEA.
 DEFT REQUESTS RETURN OF PROPERTY **ORDER FILED.**
 SENTENCING TO BE SET BY PROBATION.

 DEFT ENTER **NOT GUILTY PLEA.**
 BAIL SET CONT'D FOR DEFT.
 DEFT CONT'D IN CUSTODY.
 CASE ADJ'D TO FOR
 JYSELECT SET FOR BY MAG.
 TRIAL SET FOR
 SPEEDY TRIAL INFO FOR DEFT **STILL IN EFFECT**
 CODE TYPE START STOP
 ORDER / WAIVER EXECUTED & FILED. ENT'D ON RECORD.
 In the interest of justice as stated on the record.
 DISCOVERY ORDER FILED. c/m

OTHER: Fury selection only 9³⁰AM 7/24/95
suppression hearing and trial 7/26/95 @ 9³⁰AM

55

EXHIBIT F

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :
RESPONDENT, : & CRIMINAL NUMBER
V. : 95 CR 78(JG)
ABDU ALI (Formerly) :
Francois Holloway :
DEFENDANT. :

MOTION TO VACATE COUNSEL

NOW COMES Defendant Abdu Ali, pro se, and respectfully moves this Honorable Court for an order dismissing present counsel and appointing new counsel to represent this defendant on the ground that:

1. Current counsel was ineffective in that; (a) counsel failed to conduct an investigation to find witnesses who could corroborate defendant's story or, whose testimony could impeach the testimony of cooperating witness; (b) failed to call character witnesses to testify on behalf of defendant; (3) limited cross examination; (4) failed to fully explore plea possibilities; (5) failed to seek a plea agreement in Washington when efforts to deal with local U.S. Attorney ceased; (6) failed to argue proper jurisdiction of the crime; and (7), failed to discuss the Presentence Inves-

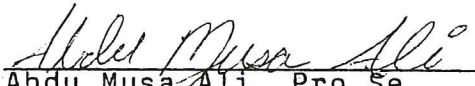
APR 24 1996

tigation Report with defendant as prescribed under Rule 32 of the Federal Rules of Criminal Procedure. In addition, defendant only talk to counsel four (4) times; twice before trial and twice after trial. Note: defendant has been incarcerated for exactly fifteen months.

W H E R E F O R E, defendant pray this Honorable Court grant him the relief sought herein, and all other and further relief this Court deems just and proper.

DATED: April 19th, 1996
Otisville, New York 10963

Respectfully submitted,


Abdu Musa Ali, Pro Se
Fed. Reg. No. 45116-053
Federal Correctional Inst.
P.O. Box 1000, Unit 4A
Otisville, New York 10963

TO: Clerk of the Court
U.S. District Court
Eastern District of NY
225 Cadman Plaza East
Brooklyn, New York 11201

U.S. Attorney Office
One Saint andrews Plaza
New York, New York 10007

EXHIBIT G



U.S. Department of Justice

United States Attorney
Eastern District of New York

LRC:DLG
Holloway.ltr

United States Attorney's Office
225 Cadman Plaza East
Brooklyn, New York 11201

April 29, 1996

Honorable John Gleeson
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Francois Holloway aka "Abdu Ali"
Criminal Docket No. 95-0078 (JG)

Dear Judge Gleeson:

The government respectfully submits this letter in response to the "Motion to Vacate Counsel" submitted by the defendant Francois Holloway aka "Abdu Ali". The defendant raises six issues that he contends prove that his counsel, Dana Hanna, was ineffective in conducting his defense during the trial for carjacking. This letter will deal with the defendant's arguments seriatim, in arguing why the defendant's motion should not be granted.

The defendant argues first that his counsel failed to conduct an investigation to find witnesses who would corroborate his story, or in the alternative, impeach the testimony of Vernon Lennon, the government's cooperating witness. The defendant's defense at trial was that he did commit some criminal acts, but that these criminal acts were in fact state offenses, not federal offenses. Defense counsel fully, and competently, examined Vernon Lennon on all possible impeachment evidence and it is difficult to imagine how he could have proceeded differently with Mr. Lennon.

Second, given the defendant's criminal record, a strong argument could be made that defense counsel would indeed have been incompetent if he had called or attempted to call character witnesses for the defendant in this trial.

Third, the effectiveness of cross-examination is properly determined by its focus, thematic content and use of available impeachment material, if any, rather than by its length. Defense counsel's cross-examinations were focused, had a theme, e.g. questioning the government witnesses as to whether shots had been fired at them, whether the defendant had threatened any of them or whether the witnesses had even seen the defendant during the carjackings.

Fourth, defense counsel did engage in plea discussions with the government. While these discussions were not necessarily extensive, they were not extensive because the defendant was very dissatisfied with the offer made by the government.

Fifth, there is no provision of which this attorney is aware that would compel, or allow, defense counsel to contact the Attorney General's office to discuss a plea in a case emanating from a local United States Attorney's Office.

Sixth, defense counsel has made numerous arguments that essentially contend that this case is not properly before this Court. There has been extensive written and oral argument in this case concerning the scope and breadth of the carjacking statute and its applicability to the defendant.


With regard to the seventh issue raised by the defendant, the failure to discuss the Pre-sentence Report, the government has no information upon which it fashion an intelligent answer. However, it would appear from the defendant's own letter that defense counsel has done nothing that could be construed as ineffective assistance.

In light of the foregoing, the government respectfully submits that the defendant's motion must be denied and that the sentencing proceed as scheduled.

Respectfully submitted,

ZACHARY W. CARTER
United States Attorney
Eastern District of New York

By:


Dolan L. Garrett
Assistant U. S. Attorney